# **Section 5**

# **Attachments**

- A. Proposal Application Checklist
- B. Sample Table of Contents
- C. Sample of OHA Contract

# **Proposal Application Checklist**

Item	Reference in RFP	Format/Instructions Provided	Required by Purchasing Agency	Completed by Applicant
The applicant's proposal must contain the signed, dated and returned to the purchase website. See Section 1, paragraph II We	sing agency as part of the l	n the order shown below. The Proposal Application. SPOF	nis checklist must last forms are on the	be SPO
Applicant:		RFP No.: <u>OH</u>	A 06-02	

T4	Reference in RFP	Format/Instructions Provided	Required by Purchasing Agency	Completed by Applicant
Item General:	Reference in KM	Tiovided	Agency	жррпение
Proposal Application Identification	Section 1, RFP	SPO Website*	X	
Form (SPO-H-200)				
Proposal Application Checklist	Section 1, RFP	Attachment A	X	
Table of Contents	Section 5, RFP	Section 5, RFP	X	
Proposal Application (SPO-H-200A)	Section 3, RFP	SPO Website*	X	
Tax Clearance Certificate (Form A-6)	Section 1, RFP	Dept. of Taxation Website (Link on SPO website)*	X	
Cost Proposal (Budget)			X	
SPO-H-205	Section 3, RFP	SPO Website*	X	
SPO-H-205A	Section 3, RFP	SPO Website* Special Instructions are in Section 5	X	
SPO-H-205B	Section 3, RFP,	SPO Website* Special Instructions are in Section 5	X	
SPO-H-206A	Section 3, RFP	SPO Website*	X	
SPO-H-206B	Section 3, RFP	SPO Website*	X	
SPO-H-206C	Section 3, RFP	SPO Website*	X	
SPO-H-206D	Section 3, RFP	SPO Website*	X	
SPO-H-206E	Section 3, RFP	SPO Website*		
SPO-H-206F	Section 3, RFP	SPO Website*		
SPO-H-206G	Section 3, RFP	SPO Website*		
SPO-H-206H	Section 3, RFP	SPO Website*		
SPO-H-206I	Section 3, RFP	SPO Website*		
SPO-H-206J	Section 3, RFP	SPO Website*		
Certifications:				
Federal Certifications				
Debarment & Suspension				
Drug Free Workplace				
Lobbying				
Program Fraud Civil Remedies Act				
Environmental Tobacco Smoke				
Program Specific Requirements:				
Certificate of Good Standing		DCCA, DLIR	X	
Letters of Support from Agencies				
Independent Financial Audit			X	

	DCCA, DLIR	X	
		X	
•	Authorized Signature		Date

SPO-H (Rev. 4/06)

Organization:	
RFP No	

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		Organization-wide
	D.	Performance and Output Measurement Tables
	A.F.	Table A
		Table B
		Table C
	E.	Program-Specific Requirement
		Tropymer whavever yearlass section

	Organization:
	Organization:
	REF NU.
OFFICE OF HAWAIIAN AFFAIRS	
OFFICE OF HAMAHAN AFFAIND	
CONTRACT NO	
BETWEEN	
OFFICE OF HAWAIIAN AFFAIRS	
OFFICE OF HAWAHAN AFFAIRS	
AND	
<del></del>	

## AGREEMENT

THIS AGREEME	ENT, made and entered into as o	f this	day of	by and
between the OFFICE OF	HAWAIIAN AFFAIRS, a body c	orporate e	xisting under th	ne Constitution and laws
of the State of Hawai'i,	by its Administrator, Clyde W.	Nāmu'o, a	and its Deputy A	Administrator, Ronald B.
Mun, acting by and on b	ehalf of the Board of Trustees,	whose pri	ncipal place of I	ousiness and mailing
address is 711 Kapi'olar	ni Boulevard, Suite 500, Honolu	ılu, Hawai	'i 96813, hereir	nafter referred to as
"OHA", and	by its		, whose princip	al place of business and
mailing address is				
				96813 (Federal I.D.
	), hereinafter refe	rred to as	"CONTRACTO	₹."
	MENT, the party who is contracti			
will be providing the ser	rvices is the "CONTRACTOR."			
	WITN	NESSETH:		
WHEREAS, one	of the purposes for which OHA	has been	established is to	better the conditions of
Hawaiians as defined in	Section 10-2, Hawai'i Revised	Statutes (	HRS); and	
WHEREAS, OH	A was established to better the o	conditions	of native Hawa	iians and Hawaiians as
defined in HRS sections	10-2, 10-4(4), 10-4(6) and 10-4	4(8), and o	ther applicable	law(s), as amended; and
WHEREAS, the	expenditure of funds as propose	ed in this	Agreement are i	ntended for the betterment
of conditions of native I	Hawaiians and Hawaiians as set	forth in H	IRS section 10-	3(1) and (2), and is
consistent with the purp	oose for which these funds were	appropria	ted; and	
WHEREAS,				
WHEREAS, OH	A desires to retain a			who can
efficiently and effective	ely assist OHA with			; and
Contract Between OHA a	nd			Page 1 of 13

WHEREAS, the CONTRACTOR possesses the required expertise, experience, and qualifications to render the services required under this Agreement.

NOW, THEREFORE, the parties hereto mutually agree as follows:

## SECTION ONE - SCOPE OF SERVICES

The CONTRACTOR agrees to satisfactorily render services hereinafter set forth, which includes, but may not necessarily be limited to:

## SECTION TWO - TIME AND MANNER OF PERFORMANCE

The CONTRACTOR shall render the services required under this Agreement from		
through and including, unless this Agreement is sooner terminated as provided for in		
SECTION SIXTEEN of this Agreement. The manner in which the services are to be performed and the		
specific hours to be worked by the CONTRACTOR shall be determined by the CONTRACTOR, limited,		
however, to the maximum amount payable as specified in this Agreement.		

# SECTION THREE - COMPENSATION AND METHOD OF PAYMENT

Should inter-island or out-of-state travel be required, the CONTRACTOR shall obtain advance written approval from the Coordinator for such travel. Travel shall be by the most economical means consistent with time available and the urgency of the trip. Travel accommodations (airfare, subsistence and lodging) shall be reasonable and comparable to the current per diem rates afforded State employees for

Contract Between OHA	and	
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similar type travel and shall be uniform and equitable for all travelers in all cases. Other necessary reasonable expenses which meet certain stipulated conditions and that are supported by receipts issued in the normal course of business may be allowed, subject to the approval of the Coordinator.

Fees shall be payable upon presentment of monthly invoices specifying to the satisfaction of OHA's Coordinator, who is identified in Section Four of this Agreement, that the services rendered have been satisfactorily performed in conformance with this Agreement. The invoices shall include a detailed breakdown of CONTRACTOR's time charges attributable to the particular billing period and shall be accompanied by a verbal and/or written activity report as required by OHA identifying the type of work activities, tasks, and/or work product completed. Receipts evidencing actual costs and expenditures shall accompany monthly invoices whenever possible. Expenditure details and related receipts for any travel shall be for actual travel expenses incurred and shall also accompany monthly invoices presented for payment.

All payments shall be made in accordance with and subject to Chapter 40, HRS, which specifies the accounting procedures and controls applicable to payments out of the Treasury of the State of Hawai'i. Final payment in final settlement of this Agreement shall be subject to §103-53, HRS, which requires a tax clearance from the Director of Taxation, State of Hawai'i, stating that all delinquent taxes, if any, levied or accrued under state statutes against the CONTRACTOR has been paid.

Upon termination of this Agreement, payments under this section shall cease, provided however, that CONTRACTOR shall be entitled to payments for work performed prior to the date of termination, provided hereinafter, and for which CONTRACTOR has not yet been paid.

# SECTION FOUR - COORDINATION AND REPORTS

The work performed under this Agreement shall be coordinated with the
, hereinafter referred to as "Coordinator", who will act as the contract
monitor and principal liaison between the CONTRACTOR and OHA, and who will assist in resolving policy
questions, expediting decisions and review of the work performed.

It shall be the responsibility of the CONTRACTOR to maintain close and frequent communication with the Coordinator at all stages of the work required under this Agreement. The CONTRACTOR shall inform the Coordinator of all scheduled contacts made by CONTRACTOR with public agencies or individuals on matters relating to work performed under this Agreement.

The CONTRACTOR shall submit to the Coordinator, upon request, written progress reports on the performance of services, expenditure reports, and/or any other information required by Coordinator. The CONTRACTOR shall submit these reports in the appropriate formats and within the deadlines specified by the Coordinator.

The CONTRACTOR may be requested to discuss any work or reports with OHA's Board of Trustees or Administrator.

SECTION FIVE - RECORDS MAINTENANCE, RETENTION, AND ACCESS

The CONTRACTOR shall, in accordance with generally acceptable accounting practices, maintain fiscal records and supporting documents and related files, papers and reports that adequately reflect all direct and indirect expenditures and management and fiscal practices related to the CONTRACTOR's performance of services under this Agreement. OHA, the comptroller of the State of Hawai'i, and any of its authorized representatives, the committees (and their staff) of the Legislature of the State of Hawai'i, and the Legislative Auditor of the State of Hawai'i shall have the right of access to any book, document, paper, file or other record of the CONTRACTOR (and of any of its subcontractors) that is related to the performance of services under this Agreement in order to conduct an audit or other examination or to make excerpts and transcripts for the purposes of monitoring and evaluating the CONTRACTOR's performance of services and the CONTRACTOR's program, management and fiscal practices to assure the proper and effective expenditure of funds under this Agreement.

The right of access shall not be limited to the required retention period but shall last as long as the records are retained. The CONTRACTOR shall retain all records related to the CONTRACTOR's performance of services under this Agreement at least THREE (3) years after the date of submission of the

CONTRACTOR's final expenditure report, except that if any litigation, claim, negotiation, investigation, audit or other action involving the records has been started before the expiration of the THREE (3) year period, the CONTRACTOR shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year retention period, whichever occurs later.

SECTION SIX – RESPONSIBILITY FOR ACCURACY, COMPLETENESS AND ADEQUACY

The CONTRACTOR shall be responsible and accountable for accuracy, completeness, clarity, and adequacy of the work performed, including work performed by agents and employees. The CONTRACTOR agrees to perform the work in a professional manner and with a professional attitude that shall involve a personal desire to place the Project's interest above other considerations and to accept the professional responsibility for the services to be rendered.

#### SECTION SEVEN – INDEPENDENT CONTRACTOR

In the performance of the services required under this Agreement, CONTRACTOR shall be an "independent contractor" with the authority to control and direct the performance and details of the work and services required under this Agreement; however, OHA shall have a general right to inspect the work in progress to determine whether, in OHA's opinion, the services are being performed by the CONTRACTOR in accordance with the provisions of this Agreement The CONTRACTOR shall insure that all person(s) hired or used by the CONTRACTOR as agents and employees are qualified to engage in the activity and services in which they participate. The CONTRACTOR's agents and employees shall also be bound by the provisions of this AGREEMENT. At the request of OHA, CONTRACTOR shall provide adequate evidence that such persons are CONTRACTOR's agents or employees.

The CONTRACTOR shall insure that all applicable licensing and operating requirements of the State, Federal and County governments and all applicable accreditation and other standards of quality generally accepted in the field of the CONTRACTOR's business are completed and satisfactorily met.

Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability for any of its agents and employees, and to third parties for all loss, cost, damage, or injury caused,

either directly or indirectly, by CONTRACTOR or CONTRACTOR's agents and employees in the course of their employment. Any work under this Agreement shall not be construed as employment with OHA and shall not entitle CONTRACTOR or CONTRACTOR's agents and employees to vacation, sick leave, retirement, or other benefits afforded OHA employees. The CONTRACTOR shall be responsible for obtaining and maintaining a general excise tax license and other required licenses related to the operations of CONTRACTOR's business and shall be responsible for the payment of applicable income, social security, any other Federal, State or County taxes and fees, as appropriate.

# SECTION EIGHT - SUBCONTRACTS AND ASSIGNMENTS

The CONTRACTOR may not subcontract, assign, or transfer any right, title, or interest in whole or in part any services to be performed under this Agreement without prior written consent and approval of OHA. OHA may condition any consent and approval upon such terms and provisions that OHA may deem necessary. Furthermore, no assignment of claims for money due or to become due to the CONTRACTOR under this Agreement shall be effective unless such assignment is first approved by OHA.

#### SECTION NINE - INDEMNIFICATION/INJURIES

The CONTRACTOR shall defend, indemnify and hold OHA, its Trustees, employees, or agents harmless, from and against any and all actions, claims, suits, damages and expenses, including attorney fees, costs and judgments arising, either directly or indirectly, out of or resulting from the errors, omissions or acts of CONTRACTOR or CONTRACTOR's officers, employees, agents, or subcontractors occurring during or in connection with the performance of CONTRACTOR's services under this Agreement.

The CONTRACTOR acknowledges its obligation to obtain appropriate insurance coverage for the benefit of the CONTRACTOR (and CONTRACTOR's employees, if any). The CONTRACTOR waives any rights to recover from OHA for any injuries that CONTRACTOR or CONTRACTOR's employees or agents may sustain while performing services under this Agreement and that are a result of the negligence of CONTRACTOR or CONTRACTOR's employees or agents.

# SECTION TEN - OTHER CONDITIONS OF USE OF FUNDS

The CONTRACTOR shall not use any funds involved in this Agreement for purposes of entertainment, or perquisites and shall comply with any and all conditions applicable to the funds to be paid under this Agreement, including those conditions made applicable by provisions of appropriation acts of the Legislature or by administrative rules adopted pursuant to law.

# SECTION ELEVEN - CONFIDENTIALITY OF MATERIAL

Any information, data, report, record or material given to or prepared or assembled by CONTRACTOR under this Agreement shall be confidential and shall not be made available to any individual or organization by CONTRACTOR without prior written approval of OHA. A violation of this Section shall be a material violation of this Agreement.

If it appears that CONTRACTOR has disclosed (or has threatened to disclose) information in violation of this Agreement, OHA shall be entitled to an injunction to restrain CONTRACTOR from disclosing, in whole or in part, such information, or from providing any services to any party to whom such information has been disclosed or may be disclosed. OHA shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

The confidentiality provisions of this Agreement shall remain in full force and effect after termination of this Agreement.

# SECTION TWELVE - CONFLICT OF INTEREST & DISCLOSURE

The CONTRACTOR represents that CONTRACTOR presently has no interest and CONTRACTOR shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services under this Agreement.

The CONTRACTOR is required to disclose any outside activities or interests, including ownership or participation in any activity that conflicts or may conflict with the best interests of OHA. Prompt disclosure is required under this Section if the activity or interest is related, directly or indirectly, to any activity that CONTRACTOR may be involved with on behalf of OHA.

# SECTION THIRTEEN - RETURN OF RECORDS

Contract Bety	veen OHA	and		
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Upon termination of this Agreement, as provided hereinafter, the CONTRACTOR shall deliver and surrender to OHA on or before the expiration date or date of sooner termination (a) all finished or unfinished documents, reports, summaries, lists, charts, graphs, maps, records, notes, data, memorandum, or other materials prepared by the CONTRACTOR; (b) all discoveries, inventions or developments produced in whole or in part under this AGREEMENT; and (c) all equipment and unused supplies and materials leased or purchased with funds paid to CONTRACTOR under this AGREEMENT, which shall become OHA property. Further, the CONTRACTOR shall surrender, return and deliver to OHA all information, data, reports, records, maps, and other materials or property to OHA, provided to the CONTRACTOR by OHA, on or before the expiration date or date of sooner termination. The CONTRACTOR shall not be required, however, to deliver or surrender any licenses to proprietary software used in CONTRACTOR's normal course of business.

#### SECTION FOURTEEN - NOTICES

All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

OHA: CONTRACTOR:

OFFICE OF HAWAIIAN AFFAIRS 711 Kapi'olani Boulevard, Suite 500 Honolulu, Hawai'i 96813 Attn: Clyde W. Nāmu'o, Administrator

Such addresses may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

All notices sent to either party under this Agreement shall be deemed to have been received THREE (3) days after date of deposit of same in the United States mail, postage prepaid, or at the time of actual receipt, whichever is the earlier.

#### SECTION FIFTEEN - DISPUTE

NEGOTIATION. In the event of any dispute, claim, question, or disagreement arising out of or relating to this Agreement or the breach, termination, or validity thereof, OHA and CONTRACTOR agree to

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use their best efforts to settle such dispute, claim, question, or disagreement. To this effect, upon notice of the dispute, claim, question or disagreement, OHA and CONTRACTOR agree to consult and negotiate with each other in good faith to reach a just and mutually satisfactory solution.

MEDIATION. If OHA and CONTRACTOR do not reach such a negotiated solution within TWENTY-ONE (21) days of notice of the dispute, claim, question or disagreement, OHA and CONTRACTOR agree next to try in good faith to settle the dispute by mediation before resorting to arbitration. The mediation shall be administered by a mediator mutually agreed upon by OHA and CONTRACTOR in accordance with the Dispute Prevention and Resolution, Inc. Mediation Rules and Guidelines.

ARBITRATION. Thereafter, any unresolved dispute, claim, question or disagreement arising out of or relating to this Agreement (including whether such dispute, claim, question or disagreement is arbitrable), or breach, termination or validity thereof, shall be settled by binding arbitration before one arbitrator, and judgment upon the Award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be administered and conducted in accordance with Arbitration Rules of Dispute Prevention and Resolution, Inc. in effect at the time a request for arbitration of the dispute is made. A decision and award of the arbitration made under the said rules shall be exclusive, final, and binding upon both parties, their agents, employees, successors, and assigns. The costs and expenses of the arbitration shall be borne equally by the parties. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of services under this AGREEMENT. The selection of the arbitrator shall be mutually agreed to by OHA and the CONTRACTOR. OHA and CONTRACTOR understand that by choosing arbitration for its dispute, OHA and CONTRACTOR are waiving their right to trial by jury.

The negotiation, mediation, or arbitration shall be conducted in Honolulu, Hawai'i.

#### SECTION SIXTEEN - TERMINATION OF AGREEMENT

If, for cause, the CONTRACTOR fails to satisfactorily fulfill, in a timely and proper manner, the CONTRACTOR's obligation under this Agreement or breaches any promises, terms or conditions of this Agreement and, having been given reasonable notice in writing of an opportunity to cure any such default and not having taken satisfactory corrective action with the time specified by OHA, OHA shall have the right to terminate this Agreement by giving written notice to the CONTRACTOR of such termination not less than SEVEN (7) calendar days before the effective date of such termination. The particular acts which shall constitute cause and justify termination include poor performance, disloyalty or self-dealing, disclosure of confidential information, or other acts of like nature.

Either party may terminate this Agreement without statement of cause at any time upon written notice to the other party of such termination not less than seven (7) calendar days before the effective date of such termination. If, however, termination is initiated by the CONTRACTOR, and OHA believes that CONTRACTOR is in material default of any provisions of this Agreement, OHA will notify CONTRACTOR of the default prior to the effective date of termination and the termination shall be one for cause as provided herein.

In the final settlement of this Agreement, OHA shall determine the amount of unexpended and unobligated funds to be refunded to OHA by the CONTRACTOR. If the termination is for cause, any other provision to the contrary notwithstanding, the CONTRACTOR shall not be relieved of liability to OHA for damages sustained because of any breach of this Agreement by the CONTRACTOR. Liquidated damages shall be assessed in the amount of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) per week.

## SECTION SEVENTEEN – AMENDMENT

This Agreement may be modified, amended or extended, if the amendment is made in writing and is signed by both parties. This contract may be extended on condition of satisfactory performance by the CONTRACTOR as determined by the COORDINATOR and shall be contingent upon the availability of

funds for compensation payable for services rendered and cost and expenses incurred beyond the initial term of this Agreement.

# SECTION EIGHTEEN - SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

# SECTION NINETEEN - WAIVER OF CONTRACTUAL RIGHT

The failure of either party to enforce, or, the granting of a waiver of, any provision of this

Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and
compel strict compliance with every provision of this Agreement.

# SECTION TWENTY - ENTIRE AGREEMENT

This Agreement contains the entire Agreement of the parties, and there are no other promises or conditions in any other Agreement whether oral or written. This Agreement supersedes any prior written or oral Agreements between the parties.

SECTION TWENTY-ONE - APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Hawai'i.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first above written.

## OFFICE OF HAWAIIAN AFFAIRS

Date:, 2006		CLYDE W. NAMU'O Its Administrator
Date:, 2006		RONALD B. MUN Its Deputy Administrator OHA"
Date: 2006	6 By	ItsCONTRACTOR"
APPROVED AS TO CONTENT:	Date: _	, 2006
APPROVED AS TO FORM:		
	Date: _	
Contract Between OHA and		Page 12 of 1

Contract Between OHA and \_\_\_\_\_

STATE OF HAWAI'1	)
CITY & COUNTY OF HONOLULU	) ss. )
NAMU'O, to me known, who being by OF HAWAIIAN AFFAIRS, a body corseal that said instrument was signed in b	, 2006, before me personally appeared CLYDE W. ne duly sworn, did say that he is the Administrator of the OFFICE orate and instrumentality of the State, and that in the absence of a chalf of said corporation by authority of its Board of Trustees, and d instrument to be the free act and deed of said organization.
	Notary Public, State of Hawai'i Print Name: My commission expires:
STATE OF HAWAI'I CITY & COUNTY OF HONOLULU	) ) ss. )
MUN, to me known, who being by me Office of Hawaiian Affairs, a body corp of a seal that said instrument was signed	, 2006, before me personally appeared RONALD B. uly sworn, did say that he is the Deputy Administrator of the orate and said instrumentality of the State and that in the absence in behalf of said corporation by authority of its Board of Trustees, edged said instrument to be the free act and deed of said
	Notary Public, State of Hawai'i Print Name: My commission expires:
STATE OF HAWAI'I CITY & COUNTY OF HONOLULU	) ) ss. )
the of of foregoing instrument is the corporate s	
	Notary Public, State of Hawai'i Print Name: My commission expires:
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